



TOWN OF TYNGSBOROUGH

Office of the Selectmen
25 Bryant Lane
Tyngsborough, MA 01879
Tel: 978 649-2300 Ext. 100 Fax: 978 649-2320

Board of Selectmen Meeting Minutes

Monday June 14, 2010

6:00 P.M.

Town Offices

Members Present: Selectwoman Ashley O'Neill, Selectwoman Elizabeth Coughlin, Selectman Rick Reault, Selectman Robert Jackson, Selectman Rich Lemoine.

Staff Members Present: Town Administrator Michael Gilleberto and Admin Assist Therese Gay

1. 6:00 P. M. Open Meeting

The Chairman called the meeting to order, the Board was introduced and this evening's agenda was read.

2. 6:05 P. M. Liquor License Violations Hearing – Thirsty's, 25 Parham Road

The Board scheduled a liquor license hearing after receiving a letter from the Chief of Police reporting on 5 separate incidents that occurred at Thirsty's, a bar located at 25 Parham Road. In the audience this evening, are members of the Police Department, abutters to Thirsty's, the owners and managers and their Attorney.

Before the opening of the hearing, Chairwoman O'Neill read from a prepared statement the order in which the hearing will be conducted. The Board voted unanimously on a motion by Selectman Jackson, second by Selectman Reault to waive the reading of the Notice of Hearing. The Manager of Record, Mr. Thien Dang was sent a letter notifying him of the hearing scheduled for this evening. The list of violation are 1) Indecent exposure occurred on April 2, 2010, violation TABR, Section 12; ABCC Regulations, 204 CMR 2.05(2). Also M.G.L. c.272, s53. 2) Excessive noise occurred on April 11, 2010, violation Town of Tyngsborough Zoning by-laws, Sections 3.14.40 and 3.14.41; and TABR Section 12. 3) Drink till you drop, Happy Hour promotion, solicitation occurred on April 26 and May 1, 2010, violation of ABCC Regulations, 204 CMR 4.03 paragraph (1) (a) (c) (d) (e) and paragraph (2); TABR, Section 34. 4) Ladies Night Promotion, discriminatory conduct, occurred on May 5, 2010 violation of TABR, Sections 16 and 34; ABCC Regulations 204 CMR 4.03 Paragraph (1) (a) and Paragraph (2). And 5) Gaming Events Promotion, Beer Pong Tourney, violation on May 1 and May 5, 2010, violation of ABCC Regulations, 204 CMR 4.03, Paragraph (1) (h) and paragraph (2); TABR, Section 12.

Town Counsel asked that each party who wished to speak do so on the specific violations outlined this evening, and to stay true to the facts of the specific violation.

The Board voted unanimously on a motion by Selectwoman Coughlin, second by Selectman Jackson to open the hearing.

Selectman Reault rose and asked if anyone who wishes to speak at tonight's forum to please rise and be sworn in. All who wished to speak at this hearing rose and were sworn in.

Detective Sergeant Richard Howe, representing the Police Dept. as Prosecutor, called as witnesses Reserve Officer Richard St. Pierre, Officer Thomas Walsh, Chief William Mulligan and Building Commissioner Mark Dupell.

Officer St. Pierre was working a paid detail at Thirsty's on April 3, 2010 from 8:00 P.M. to 1:00 AM, he was working in response to the noise/disturbance and security for the bar. Officer Thomas Walsh was in an unmarked vehicle observing the patrons as they exited the bar.

The Licensee, in writing, stipulated to the following:

Indecent Exposure: The police report is admissible as an official Police Department report and that the individual did urinate in the parking lot; provided, however, any other factual allegations or conclusions contained therein are not admitted.

Excessive Noise: The Building Commissioner's report is admissible as an official report of the Building Commission; provided, however, Thirsty's does not admit to any of the facts or conclusions contained therein.

Drink Till You Drop Promotion: The website and/or Facebook printouts are admissible as website and/or Facebook documents and are accurate as to the day printed; provided, however, Thirsty's does not admit to any violation of law.

Ladies Night Promotion: The website and/or Facebook printouts are admissible as website and/or Facebook documents and are accurate as to the day printed; provided, however, Thirsty's does not admit to any violation of law.

Gaming Events Promotion: The website and/or Facebook printouts are admissible as website and/or Facebook documents and are accurate as to the day printed; provided, however, Thirsty's does not admit to any violation of law.

The following documents were admitted as evidence as official and/or valid documents but not as any facts or conclusions contained therein except as otherwise noted above:

The Police Report regarding Kurtis Dolan, April 3, 2010, by Police Officers Thomas F. Walsh and Richard St. Pierre. The Zoning By-Laws, § 3.14.00, and Building Commissioner's Report dated April 13, 2010. Thirsty's Face Book postings on or about April 29, 2010, and April 30, 2010, Rock/Paper/Scissors Tournament on or about April 23, 2010, and beer pong tournament. Thirsty's Face Book postings on or about May 7, 2010, and May 8, 2010. Thirsty's Face Book postings on or about April 30, 2010, and May 1, 2010.

As the hearing continued the observations made by police officers and building commissioner were introduced. The police department prosecutor called his witnesses to speak to the offenses, the defense attorney questioned the witnesses, the board and town counsel asked questions and/or commented on the allegations. The defense attorney then called his witness Mr. Odum, manager and Mr. Lanier the engineer who worked on the soundproofing, the same format of questions and/or comments ensued.

As to the first offense, Indecent Exposure, on or about April 3, 2010, at approximately 1:15 a.m., Reserve Police Officer Richard St. Pierre observed a patron who exited the premises in a very intoxicated state and who urinated publicly at the entrance against the building in the presence of several persons.

Police Officer Thomas Walsh was also at the scene and spoke with the patron, who admitted to urinating; Police Officer Walsh also observed that said patron was intoxicated.

Regarding the second offense, Excessive Noise, Mark E. Dupell, the Building Commissioner with noise decibel reading equipment, on April 11, 2010, at approximately 12:30 a.m. to 1:30 a.m., found that the decibel level on five (5) separate occasions exceeded the decibel level of fifty (50), in violation of the Tyngsborough Zoning By-Laws, and, in addition, observed that some patrons were talking very loudly, were yelling and screaming, and that some patrons were making their tires screech as they exited the premises.

Regarding the third offense, Drink Till You Drop, the fourth offense, Ladies Night Promotion, and the fifth offense, Gaming Events Promotion, on the above dates and using an account owned and operated by the Licensee on Facebook, a social networking website, the Licensee promoted a so-called "happy hour" by offering \$25.00 cover charge for two straight hours of free drinking and promoted and offered to serve free shots of alcohol to all ladies on certain dates and at certain hours set forth in Face Book, and promoted gaming events without being a non-profit organization and without the necessary permits from the appropriate state agencies.

The establishment did receive from the board two letters of notice of the violations, the letters were hand delivered to the owner. The town and defense made closing statements to the facts of the 5 violations.

The Board voted unanimously on a motion by Selectwoman Coughlin, second by Selectman Jackson to close the evidentiary portion of the hearing.

The Board deliberated on the 5 violations. The Board did find that 5 violations did in fact occur and voted the following.

The Board voted 4-1-0 on a motion by Selectwoman Coughlin, second by Selectman Jackson the board is in agreement of the violation of indecent exposure that occurred on April 10, 2010. Roll Call Vote: Selectmen Robert Jackson, yes; Selectman Lemoine, yes; Selectwoman Coughlin, yes; Selectwoman O'Neill, yes; and Selectman Reault, no. Mr. Reault does not agree that the indecent exposure is related to the alcohol license violation.

The Board voted 4-1-0 on a motion by Selectman Jackson, second by Selectwoman Coughlin the board is in agreement of the violation of excessive noise that was witnessed on April 11, 2010. Roll Call Vote: Selectmen Robert Jackson, yes; Selectman Lemoine, yes; Selectwoman Coughlin, yes; Selectwoman O'Neill, yes; and Selectman Reault, no. Mr. Reault does not agree that excessive noise is related to the alcohol license violation.

The Board voted 4-1-0 on a motion by Selectman Lemoine, second by Selectman Jackson the board is in agreement of the violation drink till you drop advertised on their facebook page on April 26, 2010 which is in violation of ABCC happy hour CMR 204 4.03 and the TABR Section 34. Roll Call Vote: Selectmen Robert Jackson, yes; Selectman Lemoine, yes; Selectwoman Coughlin, no; Selectwoman O'Neill, yes; and Selectman Reault, yes. Ms. Coughlin does not agree that the drink till you drop is a violation, the manager did receive a warning and did respond by not holding the event.

The Board voted 4-1-0 on a motion by Selectman Jackson, second by Selectman Lemoine the board is in agreement of the violation ladies night advertised on their facebook page on May 1, 2010 which is in violation of ABCC happy hour CMR 204 4.03 and the TABR Section 34. Roll Call Vote: Selectmen Robert Jackson, yes; Selectman Lemoine, yes; Selectwoman Coughlin, no; Selectwoman O'Neill, yes; and Selectman Reault, yes. Ms. Coughlin does not agree that the drink till you drop is a violation, the manager did receive a warning and did respond by not holding the event.

The Board voted 5-0 on a motion by Selectman Reault, second by Selectman Jackson the board is in agreement of the gaming where money was offered and advertised on their facebook page on May 1, 2010 and May 5, 2010 which is in violation of ABCC happy hour CMR 204 4.03 and the TABR Section 12. Roll Call Vote: Selectmen Robert Jackson, yes; Selectman Lemoine, yes; Selectwoman Coughlin, yes; Selectwoman O'Neill, yes; and Selectman Reault, yes.

The Board moved to the disciplinary phase of the hearing, the Board asked for the Police Chief for his recommendation. Chief Mulligan recommended 1-5 days in total suspension. Defense Attorney Mr. Nicosia recommends no penalty as this is the first offense, should offer public warning with no suspension.

The Board deliberated the merits of treating the violations as 5 in totality, with one Selectwoman looking at the violation as individual offenses. The suspension ranged from 10 days to 3 days. The majority consensus of the Board was to hand down a 3 day suspension. The Board voted 4-1-0 to suspend Dracut Food Service, Inc., DBA Thirsty's All Alcoholic Beverage Restaurant License for 3 days beginning on Thursday, July 29, and ending on Saturday, July 31, 2010.

Defense Attorney Nicosia asked the Board to vote a stay of the suspension until after the ABCC's decision on the Board's ruling. And has asked the Board to preserve the video of the meeting.

The Board voted unanimously on a motion by Selectwoman Coughlin, second by Selectman Reault to stay the suspension until after the Alcoholic Beverages Control Commission's decision on the Board's ruling.

The Board voted unanimously on a motion by Selectman Lemoine, second by Selectman Jackson to close the hearing. The hearing was closed at 9:30 P.M.

3. Citizen/Business Time

Mr. Joe Paquette came forward this evening to speak to the comment in the Lowell Sun that Ms Dang made. Mr. Dang's courtesy of helping Mr. Paquette this winter by plowing in front of his house, but did not shovel his driveway, should not be interpreted as a nice gesture overshadowed by Mr. Paquette's complaints of the noise emanating from the bar they own.

4. Other Business

A. Review the Minutes of Monday March 22, 2010 and Monday June 7, 2010

The board will forward any comments and corrections to the office, for correction and placed on the June 28 agenda for approval.

B. Review the Special Permit Decision

The Special Permit Decision to be reviewed. Town Counsel is in the process of reviewing and to sign the decision.

C. Appoint a representative to the TECC sub-committee

The Board received a letter from the School Committee on Friday, June 4 informing the Board that on Tuesday evening of June 1, 2010 to create a The Early Childhood Center Study Committee. The group will be charged with the reviewing the status of the facility and with developing recommendations for future use or uses of the Coburn Road school building. Following the Board discussion of the letter received from the School Committee, Selectman Jackson voiced interest in being appointed to that committee. The Board voted unanimously on a motion by Selectman Lemoine, second by Selectwoman Coughlin to appoint Selectman Robert Jackson to The Early Childhood Center sub-committee.

5. Correspondence

The Clerk of the Board read the list of correspondence in this evening's Selectmen's meeting packet. The Board voted unanimously on a motion by Selectman Reault, second by Selectman Jackson to approve the correspondence as read. Comments on the correspondence: the Board instructed the Administrator to forward the Westford Road agreement to Town Counsel for review and to place the agreement and the Police policies and procedures on the June 28 meeting. The Administrator did inform the Board that NMCOG will help in validating the town's boundaries. The Selectmen asked that the Westford Road Development request and agreement be placed on the next meeting. The Police Policies and Procedures will be placed on a July agenda. Selectwoman Coughlin reminded everyone that the FEMA disaster assistance registration will end on June 28th; and to remember to fill out the census information it is very important to the town.

6. Selectmen's Notes

Selectman Jackson was in attendance at the Dance Expression dance recital, it was very well choreographed and it was well attended. Also a reminder to all who wished to be reappointed or has an interest in serving on committees and boards do need to submit a letter of interest, a list of open positions is available on line. Selectman Jackson also asked if the Chair of Selectmen pen a letter to the Chair of the School Committee requesting a copy of the approved and signed teachers' contract and a financial report of the sustainability of the contract. A copy should go to the Chair of the Selectmen, Finance Committee, the Strategic Financial Planning Committee and the Town Administrator. The Board voted unanimously on a motion by Selectman Jackson, second by Selectman Lemoine to request our Chairman to pen a letter to the School Committee Chairman requesting a copy of the teachers' contract and a financial sustainability report of the contract.

Selectman Lemoine has asked the Board to have the appointments schedule for July as he will be out of town at the end of June. He and the Administrator met with the owners of the First Parish Church on Middlesex Road to discuss the painting of the building. The owners will solicit 3 bids on the cost of the painting of the church as of this week they had not received any bids and as soon as they do they will meet again with us to discuss. Selectwoman Coughlin announced that she and committee have submitted an application for grant funds to assist in insulating the town hall and middle school building. Because the Town has been designated a green community it is in line to receive the grant funding. The town will also receive some solar compactors and also signs. Selectman Reault has no notes this evening. Selectwoman O'Neill did attend the ribbon cutting ceremony at the Positively

Young Salon and Bittersweet Shoppe and Antique shop businesses on Kendall Road; they will be in on Monday, June 28th under business time to present their business.

7. Town Administrator's Notes

The Town Administrator has received a copy of a letter from resident's attorney in reference to Thirsty's, it was given to Town Counsel. And I have also forwarded additional complaints to the Board of Health per Town Counsel's recommendation. Terry and I are proposing phase 1 to include an itemized listing of correspondence, and posting correspondence on line with the Board's approval. Budget status: A final state budget is expected later this month. Departmental info: The Senior work off program is to continue as before with Board approval. The police dept will need adjustment the Chief is assembling a report for the Board. Wiring Inspector's last day is June 30th I am looking into a short term solution for the summer while evaluating a long term solution. The Veterans' Agent: The town of Westford is hosting a meeting to discuss the potential for shared/subscriber/regional Veterans Agent services. Though unclear if this is a potential solution for Tyngsborough I will attend the meeting. Animal Control: The Westford Town Manager is looking to alter the structure of its Animal Control Services they are reviewing the staffing level and potential opportunities to reduce s services, more information is expected next week. Construction on Farwell Rd, Locust Ave and Joyce Circle began on Saturday. The Highway Dept continues to prepare a project plan to replace the culvert on Westford Road. A final proposal will be brought for approval of the Board this month. Contracting/procurement The negotiation with the potential BLS ambulance provider continues. Bid for the Highway Dept. services were opened on Thursday, June 10, results will be available late this week. The Town Collector has traditionally been designated the town's parking clerk, that designation will be on the June appointments. I am in touch with MassDOT and am attempting to schedule an update in front of the Board as soon as June 28th. Campground project continues have coordinated a meeting for this Wednesday. A further update is forthcoming. And the town has received a request from the Census bureau to validate our boundaries. I am engaging NMCOG's GIS assistance to help validate.

8. Executive Session

The Board of Selectmen voted on a motion by Selectman Jackson, second by Selectman Reault to enter into Executive Session to discuss collective bargaining and return to open session only to adjourn. Roll Call Vote: Selectwoman Elizabeth Coughlin, yes; Selectwoman Ashley O'Neill, yes; Selectman Robert Jackson, yes; Selectman Rick Reault, yes; Selectman Rich Lemoine, yes. The Board entered into Executive Session at 10:00 P.M.

9. Adjournment

The Board, having exited executive session, voted unanimously on a motion by Selectwoman O'Neill, second by Selectman Jackson to adjourn the meeting. The meeting adjourned at 10:45 P.M.

Respectfully submitted,

Therese Gay
Administrative Assistant

Approved on: Monday July 26, 2010